IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10042 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KIRITKUMAR NARHARIBHAI THROUGHN U PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10042 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR RC KODEKAR, AGP for Respondent No. 1-3

RULE SERVED BY DS for Respondent No. 1-2

M A SHAIKH for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 04/11/2004

ORAL JUDGEMENT

By way of this Special Civil Application under

Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 10-6-2004 passed by the District Magistrate, Kheda at Nadiad, in exercise of powers under Section 3(2)) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

2. Heard learned counsel appearing for the respective parties. It is submitted by the learned counsel for the petitioner that the petitioner has been booked under PBM by the order dated 10-6-2004 and he was actually detained on the same day. He has concentrated his arguments mainly on the point of delay in deciding the representation. It is submitted that the petitioner has sent a written representation to the detaining authority dated nil and it was received on 21-6-2004 and called for translation on 22-6-2004. Said representation was decided on 8-7-2004 and hence, there is a delay in deciding the representation. In this connection, he has relied upon the decision of the Apex Court rendered in Rajammal Vs. State of Tamil Nadu and another reported in AIR 1999 S.C. 684 wherein it was held at head note as under:

> "Detention-Unexplained delay of five days in considering and disposing detenu's representation-Mere absence of Minister at Headquarters not sufficient to justify delay-Detention vitiated."

It has been further held by the Apex Court in para 9 as under:

> "The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the representation.It is not enough to say that the delay was very short. Even longer delay can as well be explained. so the test is not the duration or range of delay, but how it is explained by the authority concerned."

3. In the matter before the Supreme Court in Rajammal (supra), it appeared that there was a delay of five days. For that also, explanation has been putforward by the authority that Minister was on tour for a period of two days. Still, Apex Court has stated that five days consumed in deciding the representation of the

detenu is a delay. Whereas in the present case, the representation dated nil which was received by the authority on 21-6-2004 was rejected on 8-7-2004. Hence, there is a delay in deciding the representation. However, no satisfactory explanation has been putforward by the authorities for the delay caused in deciding the representation though filed the affidavits. Hence, in view of the aforesaid judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained. Since the petitioner succeeds only on this ground, learned counsel for the petitioner did not press other points.

4. The petition is allowed. The impugned order of detention dated 10-6-2004 passed against the detenu KIRITKUMAR NARHARIBHAI PATEL is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(R.P.DHOLAKIA,J.)
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